(14)

No. 91-1657

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1991

CHARLENE LEATHERMAN, et al.,
Petitioners,

v.

TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT, et al.,
Respondents.

On Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

BRIEF *AMICI CURIAE* FOR THE STATES OF TEXAS, ALABAMA, ALASKA, ARKANSAS, CALIFORNIA, HAWAII, KANSAS, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN, WYOMING ILLINOIS, NEVADA

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QUESTION PRESENTED

May a civil rights complaint against a local governmental entity, alleging constitutional violations caused by the entity's failure to adequately train its police officers, be dismissed under FED. R. CIV. P. 12(b)(6) for complaint's failure to satisfy a "heightened pleading" requirement, or is such dismissal prohibited either by the system of "notice pleading" mandated by FED. R. CIV. P. 8 or by the Rules Enabling Act, 28 U.S.C. § 2072(b), which provides that rules of practice and procedure shall not abridge, enlarge, or modify any substantive right?

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

INTEREST OF THE *AMICI CURIAE*

The various *amici* states have an abiding interest in this case because this Court's decision on the pleading standard before it could have a great effect on the way all circuits require a plaintiff to plead a civil rights case where immunity is an issue. The *amici* states, through their various attorneys general, provide legal representation to state officials who are sued by individuals for violation of their civil rights under 42 U.S.C. § 1983. The fact specific pleading standard being challenged before this Court was mandated by the Fifth Circuit to be applied to suits against individual state officials who were entitled to the defense of immunity, qualified or absolute. *See Elliott v. Perez*, 751 F.2d 1472 (5th Cir. 1985). At this point, some circuits require heightened pleading in this context and some specifically do not. All of the *amici* states believe that the heightened pleading requirement is a necessary adjunct to effectuate the substantive defenses of qualified and absolute immunity. The Fifth Circuit extended the *Elliott* standard to municipalities without explanation in *Palmer v. City of San Antonio*, 810 F.2d 514 (5th Cir. 1987). However, the substantive bases for applying the heightened pleading requirement differ in the contexts of qualified immunity and municipal immunity. Because the *amici* states believe in the correctness of the *Elliott* standard, we urge this Court to affirm the judgment below.

SUMMARY OF ARGUMENT

1. The fact specific pleading requirement is a mechanism for effectuating the substantive defense of qualified immunity; it is not a rule of procedure. While the requirement is a departure from the notice pleading concept embodied in FED. R. CIV. P. 8, it assists the courts in determining questions of

immunity prior to the debilitating processes of discovery and trial, activities the qualified immunity defense was specifically designed to avoid. This Court in *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) stated that "the contours of the [clearly established] right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Without detailed factual pleadings stripped of conclusory labels, the trial judge will be unable to evaluate the "objective legal reasonableness" standard which is the "touchstone" of *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) ("government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known"). Because immunity must be addressed as a threshold issue, the fact specific pleading requirement goes to the very heart of the immunity doctrine.

2. Municipal immunities differ both conceptually and procedurally from the immunities available to individual state officials. However, many of the same policy issues apply, such as expenses of litigation and diversion of official energy from pressing public issues. As the resources of local government are not inexhaustible, endless fishing expeditions by private litigants and federal judicial second-guessing of municipal employee-training programs should be discouraged unless plaintiffs state specifically the information giving rise to their belief that they may have a cause of action against a municipality. Although municipalities are not entitled to the same sort of immunities available to individual public officials, the fact specific pleading requirement protects existing municipal immunities and diverts insubstantial claims from the litigation process. Thus, fact specific pleading in the context of municipal immunities does not enlarge the substantive rights available to municipalities.

ARGUMENT

I. THE SUBSTANTIVE DEFENSE OF QUALIFIED IMMUNITY REQUIRES FACT SPECIFIC PLEADING IN ACCORDANCE WTH THE RULES ENABLING ACT, 28 U.S.C. § 2072(b).

The questions presented in this case go to a Fifth Circuit requirement of fact specific pleading when alleging a cause of action pursuant to 42 U.S.C. § 1983 against a local government. *See Palmer v. City of San Antonio*, 810 F.2d 514 (5th Cir. 1987) (heightened pleading requirement extended to municipalities without explanation). Petitioners claim that the requirement of fact specific pleading violates Rule 8 of the Federal Rules of Civil Procedure and its mandate that a litigant need only make a short and plain statement of his claim, along with the Rules Enabling Act's stricture that rules of practice and procedure shall not abridge, enlarge, or modify any substantive right. The Fifth Circuit's first detailed analysis and rationale for fact specific pleading appeared in *Elliott v. Perez*, 751 F.2d 1472 (5th Cir. 1985) and arose in the context of the individual immunity defense.[1] Individuals sued under § 1983 generally are entitled to

[1] Some circuits have declined to adopt an *Elliott* rationale, some circuits specifically have adopted it, and some have done both. *See, e.g., Martin v. D.C. Metropolitan Police Dept.*, 812 F.2d 1425, 1435 (D.C. Cir. 1987) (using *Elliott* as support of the D.C. Circuit's heightened pleading requirement); *Freedman v. City of Allentown*, 853 F.2d 1111, 1114-15 (3rd Cir. 1988) (heightened pleading required); *Elliott v. Thomas*, 937 F.2d 338, 345 (7th Cir. 1991), *cert. denied sub nom. Propst v. Weir*, 112 S. Ct. 973 (1992) (declining to follow *Elliott* because the right not to be tried is "procedural," not "substantive."); *Nuclear Transport & Storage, Inc. v. United States*, 890 F.2d 4348, 13 (7th Cir. 1989) (*Elliott* specifically applied to *Bivens* claims because of qualified immunity issue); *Bergquist v. County of Cochise*, 806 F.2d 1364, 1367 (9th Cir. 1986) (heightened pleading requirement of *Elliott* specifically rejected for Ninth Circuit purposes); *Pueblo Neighborhood Health Centers v. Losavio*, 847 F.2d 642, 648-49 (10th Cir. 1988) (citing *Elliott* in support of rationale requiring fact specific pleading when qualified immunity is an issue); *Marx v. Gumbinner*, 855 F.2d 783, 788-89 (11th Cir. 1988) (does not specifically adopt heightened pleading requirement, but cites *Elliott* in support of requiring stricter scrutiny of plaintiff's § 1983 complaint against a government official).

the substantive defense of immunity, qualified or absolute. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727 (1982). In order to overcome the defense of qualified immunity, the defendant official's conduct must be shown to have violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818, 102 S. Ct. at 2738; *Anderson v. Creighton*, 483 U.S. 635, 646 n.6, 107 S. Ct. 3034, 3042 n.6 (1987). The government official's liability generally turns on the "objective legal reasonableness" of the action assessed in light of the legal rules that were "clearly established" at the time it was taken. *Anderson*, 483 U.S. at 639, 107 S. Ct. at 3038-39. The law must have been sufficiently clear so as to put the government official on notice that his actions were improper. *Id.*

The interaction between the substantive defense of qualified immunity and the procedural rule which requires only a general statement of a plaintiff's claim brings about "an exquisite confrontation."

> [O]n the one hand, defendants enjoy an immunity from suit which reaches beyond trial and protects them from the debilitating processes of discovery; on the other hand, the notice pleading concepts rest on the acceptance of the idea that one may sue now and discover later what his claim is.

Elliott, 751 F.2d at 1482-83 (Higginbotham, J., concurring).

Because the immunity issue must be resolved at the earliest possible stage in the litigation process, *Hunter v. Bryant*,

___ U.S. ___, ___, 112 S. Ct. 534, 536 (1991), *citing Harlow*, 457 U.S. at 818; *Davis v. Scherer*, 468 U.S. 183, 195 (1984); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *Malley v. Briggs*, 475 U.S. 335, 341 (1986); *Anderson v. Creighton*, 483 U.S. at 646 n.6, the fact specific pleading issue goes to the very heart of the immunity doctrine. To achieve the fundamental substantive objectives of immunity, *Elliott* presents a two-step process. First, in cases invoking § 1983, the claimant is required to state specific facts, not merely conclusory allegations. *Elliott*, 751 F.2d at 1479. Second, district courts must determine as a threshold issue whether these pleadings are sufficiently detailed to defeat immunity. *Id.*, at 1480.

In resolving issues of qualified immunity, *Anderson* expressly recognized that "objective legal reasonableness" is overcome only by an articulation of facts that demonstrate a violation of specific legal principles. That is, the "clearly established right" must be identified in a more than abstract fashion. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640, 107 S. Ct. at 3039. *Elliott*'s requirement of detailed factual pleadings stripped of conclusory labels enables the trial judge to evaluate a plaintiff's claim within the objective legal reasonableness standard that is the "touchstone" of *Harlow*. *Id.*, 483 U.S. at 639, 107 S. Ct. at 3039. *Anderson* ratifies this requirement and admonishes that immunity must be addressed as a threshold issue prior to discovery. *Id.*, at n.2.

Before the trial court addresses a defendant's claim of qualified immunity, however, it must determine whether a plaintiff has asserted a violation of any constitutional right. *Siegert v. Gilley*, ___ U.S. ___, ___, 111 S. Ct. 1789, 1793 (1991); *cf. Collins v. City of Harker Heights, Texas*, ___ U.S. ___, ___, 112 S. Ct. 1061, 1068 (1992) (municipal liability may attach under limited circumstances when underlying constitutional tort by a city employee occurs). If a plaintiff has not adequately asserted violation of a constitutional right, a trial

court need not further address the question of qualified immunity. In order to resolve these legal issues as a threshold matter, then, a court must consider the factual allegations making up the plaintiff's claim for relief, normally either on defendant's motion to dismiss or for summary judgment. *Mitchell*, 472 U.S. at 527-28, 105 S. Ct. at 2816.

The application of this threshold inquiry has caused some confusion in the several circuits because while the *Harlow* court suggested that the qualified immunity analysis take place on a motion for summary judgment, at the same time it prohibited discovery until the immunity question is resolved. *See Mitchell*, 472 U.S. at 526, 105 S. Ct. at 2815 ("[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery). *See also Anderson*, 483 U.S. at 646 n.6, 107 S. Ct. at 3042 n.6 (confirms no discovery unless plaintiff's well-pleaded complaint contains disputed material allegations; then if discovery is *necessary*, it is limited to issue of immunity) (emphasis added); *Lion Boulos v. Wilson*, 834 F.2d 504, 507-08 (5th Cir. 1987) (holding essentially the same as *Anderson*). Without the factual development through discovery presupposed by the concept of notice pleading, the more appropriate procedural mechanism for qualified immunity determinations may be Rule 12(b)(6), not Rule 56. If a defendant wished to attach evidence outside the pleadings, such as an affidavit, the court could treat the motion to dismiss based upon qualified immunity alternatively as a motion for summary judgment pursuant to Rule 12(c). *See* Comment, *Qualified Immunity for Government Officials: The Problem of Unconstitutional Purpose in Civil Rights Litigation*, 95 YALE L.J. 126, 144-45, n.72 and n.73 (1985). The court also has the option of requiring a more definite statement from the plaintiff.[2] *See also Siegert*, 111 S. Ct. at 1795 (plaintiff must

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[2] *See Elliott*, 751 F.2d at 1482 and 1482 n.25. In cases involving *pro se* plaintiffs, the Fifth Circuit has approved the use of a questionaire to flesh out a *pro se* prisoner complaint. *Watson v. Ault*, 525 F.2d 886 (5th Cir.

plead fact specific allegations once the qualified immunity defense has been asserted) (Kennedy, J., concurring).

Analysis of a plaintiff's claim under the objective standard of qualified immunity is also often complicated by the fact that a material element in many § 1983 cases is the subjective intent of the defendant official. The element of subjective intent stands outside the qualified immunity defense,[3] which to overcome formerly required an allegation of malice. *Harlow*, 457 U.S. at 817-18, 102 S. Ct. at 2738 ("bare allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery" and therefore qualified immunity shall be an objective standard). For instance, in claims alleging violation of the eighth amendment, a plaintiff must plead either deliberate indifference or malice depending on the nature of his claim. *Wilson v. Seiter*, ___ U.S. ___, ___, 111 S. Ct. 2321, 2324 (1991).

Even claims which do not depend upon the subjective intent of the defendant official, such as claims under the fourth amendment, require a factual context within which an alleged constitutional violation is measured. *Hunter v. Bryant*, 112 S. Ct. at 537 ("the court should ask whether the agents acted reasonably under settled law in the circumstances"); *Graham v. Connor*, 490 U.S. 386, 393-397, 109 S. Ct. 1865, 1870-72 (1989); *Anderson*, 483 U.S. at 641, 107 S. Ct. at 3039 ("The relevant question in this case, for example, is the objective (albeit fact-specific) question whether a reasonable officer could have

1976). The Fifth Circuit has also approved the use of evidentiary hearings to develop factual bases in the same circumstances. *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985). The purpose of *Spears* hearings is in the nature of a more definite statement, not to establish controverted facts. *Id.* Thus, the admonition of *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594 (1972), that *pro se* complaints be read liberally, is met through the active participation of the district judges and state institutions.

[3] *See, e.g., Siegert*, 111 S. Ct. at 1795 (Kennedy, J., concurring) ("Here malice is a requisite showing to avoid the bar of qualified immunity.").

believed Anderson's warrantless search to be lawful, in light of clearly established law and the information the searching officer possessed."); *Malley v. Briggs*, 475 U.S. at 345, 106 S. Ct. at 1098 ("the [] question in this case is whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant"). If conclusory allegations suffice to state a constitutional violation, the protections afforded by the immunity defense will be abrogated in the very manner *Harlow* and *Anderson* sought to avoid. A court must determine whether plaintiff has asserted a violation of any constitutional right; if such an assertion is made, it must address whether that right is "clearly established" under the facts and circumstances of the case. *Siegert*, 111 S. Ct. at 1793. Thus, in order to effectuate the substantive defense of qualified immunity, the factual elements of plaintiff's claim must appear on the face of his complaint with enough particularity that the judge may conduct this two-part threshold inquiry.

The inherent tension between the fact specific pleading requirement and Rule 8 defeats neither. As the Fifth Circuit stated in *Elliott*:

> The public goals sought by official immunity are not procedural. Indeed, they go to very fundamental substantive objectives. To the extent that F. R. Civ. P. 8 and the practices under it present any conflict, the trial court must find a way to adapt its procedures to assure full effectuation of this substantive right, since the Enabling Act provides that the rules shall not abridge, enlarge or modify any substantive right.

Elliott, 751 F.2d at 1479.

This Court has also recognized this tension:

> The heightened pleading standard is a departure from the usual pleading requirements of Federal Rules of Civil Procedure 8 and 9(b), and departs also from the normal standard for summary judgment under Rule 56. But avoidance of disruptive discovery is one of the very purposes for the official immunity doctrine, and it is no answer to say that the plaintiff has not yet had the opportunity to engage in discovery. The substantive defense of immunity controls.

Siegert, 111 S. Ct. at 1795 (Kennedy, J., concurring).[4]

Because "the substantive defense of immunity controls," the fact specific pleading standard is a judicial solution to effectuate the immunity defense in a civil rights claim. As Judge Higginbotham stated in *Elliott*:

> We must solve judicial problems, and we must not solve legislative problems. My effort has been to demonstrate that it is a judicial problem -- defining the content of immunity -- that we face here.

751 F.2d at 1483.

The fact specific pleading requirement is not a substantive right itself, nor is it a judicial amendment to the Federal Rules of Civil Procedure. Rather, it is a mechanism which allows the immunity defense to be realized, in accordance with the formative principles of the Rules Enabling Act, 28 U.S.C. § 2072(b). It is not a technical rule which exists independently from the substantive right with which it is associated, a factor upon which petitioners' entire argument

[4] In fact, every circuit has found occasion to require at least a minimum of factual specificity when pleading a civil rights complaint. *See Hobson v. Wilson*, 737 F.2d 1, 30 n.87 (D.C. Cir. 1984), *cert. denied sub nom. Brennan v. Hobson*, 470 U.S. 1084 (1985) (listing cases).

relies.[5] Fact specific pleading assists the district court in no less an objective than "avoid[ing] excessive disruption of government and permit[ting] the resolution of [] insubstantial claims." *Harlow*, 457 U.S. at 818, 102 S. Ct. at 2738.

II. MUNICIPAL IMMUNITY AND PUBLIC POLICY CONSIDERATIONS JUSTIFY A FACT SPECIFIC PLEADING STANDARD IN A § 1983 CLAIM AGAINST A MUNICIPALITY.

Petitioners argue that the heightened pleading requirement abridges their remedial rights under § 1983 in cases where the evidence necessary to meet that requirement rests exclusively within the control of a municipal defendant who is immune from discovery. Their argument implies that this is peculiarly true with respect to municipal employee training programs or data which may establish a pattern. Moreover, petitioners claim that the "procedural" rule of heightened pleading impermissibly enlarges the substantive rights of municipal defendants by granting them the functional equivalent of absolute or qualified immunity. While it is well settled that municipal defendants may not claim absolute or qualified immunity, it is also well settled that municipalities do enjoy immunity from vicarious or *respondeat superior* liability. *Owen v. City of Independence*, 455 U.S. 622, 100 S. Ct. 1398 (1980) (no absolute or qualified immunity for municipalities, but recognizing that "certain rather complicated municipal tort immunities existed at the time § 1983 was enacted"), *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978) (municipalities immune from *respondeat superior* liability). *See also City of Canton, Ohio v. Harris*, 489 U.S. 379, 109 S. Ct. 1197 (1989) (municipalities immune from

[5] *See generally* Blaze, *Presumed Frivolous: Application of Stringent Pleading Requirements in Civil Rights Litigation*, 31 WM. & MARY L. REV. 935 (1990).

liability under a failure to train theory when the failure to train amounts to something less than deliberate indifference); *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S. Ct. 2748 (1981) (municipalities immune from punitive damages). Municipalities may be liable when a plaintiff can show that the municipality itself caused the harm.[6] *See Collins v. City of Harker Heights*, 112 S. Ct. at 1066-67.

Municipal immunity is conceptually different from the qualified immunity announced in *Harlow*, because qualified immunity protects an individual from suit, not just from liability. *See Wyatt v. Cole*, ___ U.S. ___, 112 S. Ct. 1827 (1992) (all three separate opinions discuss historical development of immunity doctrine). Municipal immunity is also procedurally different because qualified immunity allows for an official's interlocutory appeal upon its denial. *Mitchell v. Forsyth*, 472 U.S. at 530, 105 S. Ct. at 2817. However, many of the same policy issues which inform the qualified immunity defense also inform municipal immunities. For instance, the *Harlow* court listed various social costs attending suits against public officials: "expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office." 457 U.S. at 814, 102 S. Ct. at 2736. The first two concerns also apply in a municipal immunity context, for as Justice O'Connor stated in her concurring opinion in *City of Canton, Ohio*, "the resources of local government are not inexhaustible." 489 U.S. at 400, 109 S. Ct. at 1210. Additionally, municipalities have not been excluded from dealing with numerous insubstantial claims. *Cf. Harlow*, 457 U.S. at 818, 102 S. Ct. at 2738.

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6 Petitioners assert that this Court held that the plaintiffs in *Brower v. County of Inyo*, 489 U.S. 593, 109 S. Ct. 1378 (1989) adequately stated a claim against a local government despite the Ninth Circuit's qualification that plaintiffs' complaint contained little more than bare conclusions. This Court, however, did not address the issue of local governmental or municipal immunity; it addressed the definition of "seizure." 489 U.S. at 598-599, 109 S. Ct. at 1383.

Unless a plaintiff is required to state particular facts giving rise to her conclusion that a municipality has an inadequate training policy, then she may as a matter of routine allege a failure to train on top of the underlying constitutional violation.[7] This may result in "*de facto respondeat superior* liability on municipalities [] . . . and engage federal courts in an endless exercise of second-guessing municipal employee-training programs." *City of Canton, Ohio*, 489 U.S. at 392, 109 S. Ct. at 1206 ("This is an exercise we believe the federal courts are ill-suited to undertake, as well as one that would implicate serious questions of federalism."). The heightened pleading standard as applied to municipal immunities, then, is not just designed to weed out insubstantial or frivolous claims but is rooted in basic principles of federalism and fair notice. *See id.*, 489 U.S. at 389-392 and 395-398, 109 S. Ct. at 1205-06 and 1208-09. Valuable government resources may be drained from an endless series of

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7 *See Collins v. City of Harker Heights, Texas*, 112 S. Ct. at 1068 concerning the holding of *Canton*:

> [W]e concluded that if a city employee violates another's constitutional rights, the city may be liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation. In particular, we held that the inadequate training of police officers could be characterized as the cause of the constitutional tort if -- and only if -- the failure to train amounted to "deliberate indifference" to the rights of persons with whom the police come into contact. . . . We assume for the purpose of decision [in this case] that the allegations in the complaint are sufficient to provide a substitute for the doctrine of *respondeat superior* as a basis for imposing liability on the city for the tortious conduct of its agents . . .

It should be noted that in the instant case, the individual police officers sued by the Andert and Lealos petitioners have already stood a jury trial in a separate cause of action where no liability for constitutional violations was found. Under the holding of *Collins*, then, the Lealos and Andert petitioners should be barred from pressing their failure to train claims against any of the local government respondents.

fishing expeditions by private litigants in an ever increasingly litigious society. *Cf.* Kinports, *Qualified Immunity in Section 1983 Cases: The Unanswered Questions*, 23 GEORGIA L. REV. 597, 658 (1989). This is especially true because municipalities do not have the right to interlocutory appeal. It is ironic that the very individuals upon whom a municipality's liability will be predicated may pursue their right to interlocutory appeal while the municipality remains in the district court. At least municipalities should have the benefit of the fact specific pleading requirement.[8]

Thus, the heightened pleading standard does not enlarge a municipal defendant's substantive rights. It is a judicial response created out of concern for protecting existing substantive municipal immunities and for the various public policy considerations outlined above, balanced with the remedial rights of plaintiffs under § 1983. It is especially important to be cautious given the vast changes in municipal liability since 1961. *See, e.g., Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473 (1961) (municipalities are not "persons" for purposes of §1983 and they are absolutely immune from liability); *Monell*, 436 U.S. at 694, 98 S. Ct. at 2037 (municipalities *are* "persons" for purposes of § 1983, but are not liable under *respondeat superior*); *Owen*, 445 U.S. at 650, 100 S. Ct. at 1415 (municipalities are persons for § 1983 purposes but are not entitled to qualified or absolute immunity); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 810, 105 S. Ct. 2427, 2429 (1985) (full contours of municipal

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[8] Judge Goldberg's concern for the ability of plaintiffs to plead fact specifically in the context of municipal immunity, *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 954 F.2d 1054, 1060 (5th Cir. 1992) (Goldberg, J., concurring specially), may be addressed by allowing limited discovery under the same circumstances allowed in the context of qualified immunity. That is, discovery may be strictly tailored to gathering information necessary to enable a plaintiff to plead with the required specificity. The district court need not sanction the sort of broadly based invasive discovery constituting a disruption of government. The petitioners failed to request this sort of limited discovery below despite the rule of *Lion Boulos v. Wilson, supra*.

immunity not developed and this case is only a small step in that direction); *City of Canton, Ohio*, 489 U.S. at 396, 109 S. Ct. at 1203 (acknowledging the difficulties the court has had in defining the scope of municipal liability).

CONCLUSION

Accordingly, the *amici* states respectfully urge this Court to affirm the judgment below.

Respectfully submitted,

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